

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,

Plaintiff,

vs.

E. S. ALAMEIDA, *et al.*,

Defendants.

No. 2:04-cv-00666-JKS-KJM

ORDER

Plaintiff, Marcus R. Ellington, a state prisoner proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge under 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On June 6, 2008, the Magistrate Judge filed Findings and Recommendations, which were served on all parties and contained notice to all parties that any objections to the Findings and Recommendations were to be filed within twenty days. Ellington has filed objections to the Findings and Recommendations.

The Court previously dismissed Ellington's amended complaint granting him leave to file a second amended complaint. Docket No. 182. At Docket No. 187 Ellington filed his second amended complaint. The Magistrate Judge, upon completion of the initial screening process, has recommended dismissal with prejudice for the failure of Ellington to comply with the warnings to cease and desist in making excessive filings. In his objections, Ellington does not address the findings of the Magistrate Judge. Instead, compounding his disregard for procedural protocol, Ellington filed a 54-page document that included numerous extraneous exhibits, including another copy of his "Additional Memorandum in Support of the Second Amended Complaint" (addressing housing with CRIP gang members), "Additional Facts in Support of 42 USC § 1983 Complaint," (addressing complaints against persons other than Sweeten and Barron), and "Additional Declaration in Support of Second Amended Complaint," (also addressing his

housing complaints). None of these are relevant any claim he has against Sweeten and/or Barron.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, with particular attention to those portions relevant or pertinent to the objections raised, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis. While the Court shares the frustration of the Magistrate Judge, it is the opinion of the Court that, at this juncture, notwithstanding Ellington's persistent disregard of admonishments about extraneous filings, dismissal with prejudice appears to be an unduly harsh remedy. Accordingly, the Court will dismiss the Second Amended Complaint, without prejudice, and grant Ellington an opportunity to file a third amended complaint.

The following guide is provided Plaintiff to follow in drafting his amended complaint:

1. The amended complaint must—
 - (a) comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice,
 - (b) be submitted on the form provided with this order,
 - (c) name only custodial officers Sweeten and Barron as defendants in the caption;
 - (d) bear the docket number assigned to this case, and
 - (e) be clearly captioned "Third Amended Complaint";
3. For each named defendant, Sweeten and Barron, describe how that person is personally involved in violating Ellington's rights, *i.e.*, specify what act or omission of the defendant violated his rights and when that act or omission occurred;
4. Must not contain allegations of fact unrelated to the claims made against Sweeten and Barron; and
5. If necessary, attach additional sheets; provided, however, that the amended complaint, including all attachments or exhibits thereto, **must not exceed twenty-five (25) pages in length.**

Accordingly, IT IS HEREBY ORDERED THAT:

1. The Findings and Recommendations filed June 6, 2008, as amended herein, are ADOPTED;
2. The Second Amended Complaint filed herein at Docket No. 187 is DISMISSED, without prejudice;
3. The documents filed at Docket Nos. 188, 189, 190, and 191 are hereby STRICKEN;
4. Plaintiff is granted until **September 30, 2008**, to file a third amended complaint complying with this Order and the February 22, 2008, Order at Docket No. 182;
5. Plaintiff may not file any paper or document in these proceedings except as specifically permitted or required by the Federal Rules of Civil Procedure, the Local Rules of this Court or an order of this Court;
6. The matter is re-referred to the Magistrate Judge for further proceedings; and
7. The Clerk of the Court is directed to send Plaintiff the form to be used by a prisoner filing a civil rights action pursuant to 42 U.S.C. § 1983 and a copy of the "Pro Se Package – A Simple Guide to Filing a Civil Action."

IT IS FURTHER ORDERED THAT Plaintiff Marcus R. Ellington is cautioned that continued failure to adhere to and follow the rules of practice and procedure and the orders of this Court may result in the imposition of sanctions, including dismissal of the action with prejudice.

Dated: September 5, 2008

s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge